

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PAUL SMITH,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 07-477-GMS
)	
REGIONAL MEDICAL FIRST)	JURY TRIAL DEMANDED
CORRECTIONAL (<i>Doctors and Nurses</i>),)	
CARL DANBERG, AND THOMAS)	
CARROLL,)	
Defendants.)	

DEFENDANT THOMAS CARROLL’S ANSWER TO THE COMPLAINT

COMES NOW, defendant Thomas Carroll (“Answering Defendant”) by and through his undersigned counsel, and hereby answers the Complaint of the plaintiff, Paul Smith (“Plaintiff”). (D.I. 2).

STATEMENT OF CLAIM

Answering Defendant specifically denies any wrongful conduct. Answering Defendant specifically denies that he caused any injury claimed by Plaintiff. Answering Defendant specifically denies that he was deliberately indifferent to any serious medical condition of Plaintiff. It is denied that Plaintiff’s civil liberties were denied in any manner.

RELIEF

It is specifically denied that Plaintiff is entitled to any monetary damages, including punitive, compensatory, investigation or attorneys’ fees. It is specifically denied that Plaintiff is entitled to declaratory, injunctive or any other relief.

DEFENSES AND AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim upon which relief can be granted.
2. Plaintiff has failed to exhaust his administrative remedies.

3. Answering Defendant is immune from liability under the Eleventh Amendment.

4. Answering Defendant is entitled to qualified immunity.

5. As to any claims under state law, Answering Defendant is entitled to immunity under the State Tort Claims Act, 10 *Del. C.* § 4001 *et seq.*

6. As to any claims under state law, Answering Defendant is entitled to sovereign immunity in his official capacity.

7. Answering Defendant cannot be held liable in the absence of personal involvement for the alleged constitutional deprivations.

8. To the extent that Plaintiff seeks to hold Answering Defendant liable based on supervisory responsibilities, the doctrine of *respondeat superior* or vicarious liability is not a basis for liability in an action under 42 *U.S.C.* § 1983.

9. Answering Defendant, in his official capacity, is not liable for alleged violations of Plaintiff's constitutional rights as he is not a "person" within the meaning of 42 *U.S.C.* § 1983.

10. Insufficiency of service of process.

11. Insufficiency of process.

12. Lack of jurisdiction over the person and subject matter.

WHEREFORE, the Answering Defendant respectfully requests that judgment be entered in his favor and against Plaintiff as to all claims and that attorney fees be awarded to the Answering Defendant.

**DEPARTMENT OF JUSTICE
STATE OF DELAWARE**

/s/ Stacey Xarhoulakos
Stacey Xarhoulakos, # 4667
Deputy Attorney General
Department of Justice
820 N. French Street, 6th Floor
Wilmington, De 19801
(302) 577-8400
Attorney for Defendant Carroll

Dated: March 17, 2008

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2008, I electronically filed *Defendant Carroll's Answer to the Complaint* with the Clerk of Court using CM/ECF and have mailed by United States Postal Service, the document to the following non-registered participant:

Paul Smith, *Pro Se*
1416 Cowmarsh Creek Road
Camden, DE 19934

/s/ Stacey Xarhoulakos
Deputy Attorney General
Department of Justice
820 N. French St., 6th Floor
Wilmington, DE 19801
(302) 577-8400
stacey.xarhoulakos@state.de.us